

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DERRICK HOWARD,)	
)	
Plaintiff,)	
v.)	Case No. 4:17CV2322 SNLJ
)	
DAVID JAY BERNSTEIN, et al.,)	
)	
)	
Defendants,)	

MEMORANDUM AND ORDER

Plaintiff Derrick Howard claims that his attorneys, the defendants, committed legal malpractice, negligence, breach of fiduciary duty, and fraudulent misrepresentation by failing to properly represent him in a prior lawsuit he brought in this Court. Plaintiff was granted *in forma pauperis* status, and the defendants were served on March 26, 2018.

On April 12, 2018, defendant David Jay Bernstein filed a motion for an extension of time to answer the complaint (#16). The motion was granted, and the answer was due on May 13, 2018.

No answer was filed on May 13, and none has been filed at all on behalf of any of the six defendants.

On June 25, 2018, plaintiff filed a “motion to compel service pursuant to Fed. R. Civ. P. 5(a)(1)(A)-(E).” (#18.) Plaintiff states that the defendants have not been serving plaintiff with its filings or pleadings.

On July 16, 2018, apparently realizing there had been no filings at all, plaintiff moved for entry of default (#19) against “defendants David Jay Bernstein, et al.” The

clerk entered default against only the defendants whose names included the name “Bernstein” – David Jay Bernstein, David Jay Bernstein, P.A., and Bernstein & Weintraub. (#20.)

The next day, on July 21, 2018, defendant David Jay Bernstein filed a motion on behalf of himself, David Jay Bernstein, P.A., Bernstein & Weintraub, and Federal Legal Center, seeking to set aside the clerk’s default (#21). Notably, although Bernstein moved on behalf of Federal Legal Center, no entry of default has been made against it. Bernstein makes no statements about defendants Perry Orlando or James Murphy, who have been served but also failed to file timely answers.

Plaintiff filed a response in opposition on August 13, 2018. Plaintiff asserts that he still has not received copies of numerous filings in this case, including filings by defendants and orders from this Court. The Court has been mailing documents to plaintiff at the address on the docket sheet in this case:

Derrick Howard
#24997-044
COLEMAN II
U.S. PENITENTIARY
P.O. BOX 1034
COLEMAN, FL 33521

It appears that defendants have also served plaintiff via U.S. Mail at that same address. Because neither the Court’s mailings nor defendants’ mailings are reaching plaintiff, it appears that the problem is with mail receipt or distribution at the federal prison in which plaintiff is incarcerated.

Plaintiff asserts that he has not received a copy of the defendant's motion to set aside the entry of default in this case. Plaintiff asserts that he learned about the entry of default and the motion to set aside the default from a friend outside the prison who has a PACER account. Despite having filed a "response in opposition," plaintiff has not actually seen the defendants' motion to set aside. Plaintiff thus asks that the Court abstain from ruling on the motion until he has received a copy of the motion.

The Court will deny plaintiff's motion to compel, as it appears the defendants have been attempting to serve plaintiff with their filings.

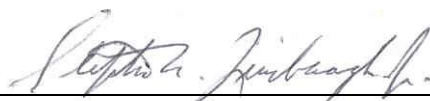
Accordingly,

IT IS HEREBY ORDERED that the Clerk shall send plaintiff a copy of defendants' motion to set aside the default (#21) together with a copy of this Order, the docket sheet, and the Court's previous three orders (#19, #17, #15).

IT IS FURTHER ORDERED that plaintiff shall have until September 18, 2018 in which to file a response memorandum.

IT IS FINALLY ORDERED that plaintiff's motion to compel service (#18) is DENIED.

Dated this 17th day of August, 2018.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE